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April 5, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. -- Room TWB-204
Washington, D. C. 20554

Re: *Ex Parte*, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability; CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Ms. Roman Salas:

On Thursday, April 5, 2001, Teresa Marrero, AT&T Senior Attorney, David Lawson of Sidley and Austin and the undersigned met with Glenn Reynolds, Deputy Chief-Common Carrier Bureau ("CCB"), Brent Olson, Deputy Chief- CCB Policy and Program Planning Division and William Kehoe III, Attorney Advisor, CCB Policy and Program Planning Division. The purpose of the meeting was to review AT&T's position in the above-referenced proceeding and continue our discussions with the Bureau concerning the collocation of multi-function equipment and the use of cross-connects for interconnection and access to unbundled network elements. The attached presentation was used as a reference during our discussions. Please include a copy of this submission in the record of the proceedings noted above.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

ATTACHMENT

cc: W. Kehoe III
B. Olsen
G. Reynolds

Collocation

Presentation to the FCC
April 5, 2001

D.C. Circuit Remand

The Court did not hold that the statute precludes collocation of any particular telecommunications functionalities, nor did it dictate any particular result on remand.

"The Collocation Order *as presently written* seems overly broad and disconnected from the statutory purpose enunciated in § 251(c)(6)."

The Court expressly held that "any search for 'plain meaning' in the statute is fruitless" and that the Commission's construction of the Act is therefore entitled to deference. The decision therefore precludes only the re-adoption of the Commission's original "used and useful" standard

Definition of "Necessary"

The Court held: "a statutory reference to 'necessary' must be construed in a fashion that is consistent with the ordinary and fair meaning of the word, *i.e.*, so as to limit 'necessary' to that which is required to achieve a desired goal" here, interconnection and access to network elements

Definition of "Necessary"

Both interconnection and access to UNEs mean more than mere physical connections.

"Interconnection" means connections that are "equal in quality" to what the incumbent provides to itself -- 47 U.S.C. § 251(c)(2)(C); *Local Comp. Order* ¶ 224.

"Access" to network elements means the ability to "use" fully all of the features, functions, and capabilities of the leased element. *Local Comp. Order* ¶ 268; 47 C.F.R. § 51.307(c).

Definition of "Necessary"

The ILECs' § 251(c)(6) obligations thus go beyond mere physical interconnection. Rather, the focus must be on what equipment is "necessary" to allow CLECs to provide the same quality of service and to fully utilize all of the functionalities of the elements they have leased.

The Court's suggested focus on "indispensibility" in determining whether equipment is "necessary" does not require the Commission to ignore costs in construing the "necessary" limitation. *GTE* and *Iowa Utils. Bd.* merely prohibit an approach that deems *any* cost savings from collocation adequate to render collocation "necessary" because that approach would equate "necessary" with "useful."

Thus, if the inability to use or collocate a piece of equipment would make it practically infeasible (*e.g.*, too costly or inefficient) for CLECs to provide some services to some customers or to provide service of the same quality as incumbents, then the equipment is plainly "necessary."

Application of "Necessary"

The Commission should not tie the definition of "necessary" to equipment in use today.

Specific equipment lists or case-by-case determinations would give incumbent LECs the ability to act on their incentive to use changing technology to impede and delay competition. As an equipment manufacturer has explained, "any regulatory system that does not take such changes into account is destined to stifle innovation and severely hamper entry by new competitors by consigning them to antiquated level of technology." *See* Cisco Comments.

The Commission should instead adopt rebuttable presumption that any equipment providing particular functionalities can be collocated.

Multi-Function Equipment is "necessary"

Practical reality – if CLECs can't collocate multi-function equipment, the game is over. Most equipment manufactured and used today for providing telecommunications services is multi-function.

A statutory provision that permits collocation of any equipment necessary to foster equal quality interconnection and full and nondiscriminatory use of network elements thus includes the collocation of modern multi-function equipment.

First, the plain terms of § 251(c)(6) focus not on whether equipment needs to be collocated but simply on whether it is needed, broadly speaking, for interconnection and access to network elements.

Second, AT&T has shown that each of the key functionalities of modern multi-function equipment is also "necessary" if the statutory focus is more narrowly whether there is a need for it to be collocated -- either because the inability to collocate that functionality would impede entry or because the inseverability of functionalities would mean that a prohibition on using equipment with one assertedly "non-necessary" functionality would effectively deny CLECs use of concededly necessary functionalities.

Multi-Function Equipment is "necessary"

Third, the Commission can rely on the fact that single function equipment is increasingly unavailable – thus prohibiting collocation of multi-function equipment would, as a practical matter, make interconnection and access to UNEs operationally infeasible.

Fourth, the Commission can rely upon the Act's nondiscrimination language. There are two important sources of this nondiscrimination principle. Interconnection and access to UNEs are themselves defined in 251(c)(2) and (3) as "nondiscriminatory" interconnection and access. And § 251(c)(6) itself includes a nondiscrimination prohibition – ILECs cannot impose discriminatory collocation conditions.

Cross-connects

Cross-connects are "necessary" for interconnection and access to UNEs, e.g., to fully utilize loops in line splitting situations.

In any event, CLECs have the right under § 224(f) to place cross-connect wires in the central office. § 224(f) requires the ILEC to provide nondiscriminatory access to "any" ducts, conduits or rights-of-way controlled by the ILEC.

Thus, the only question is whether the ILECs can prohibit CLECs from actually connecting those wires to equipment in their collocation spaces. Clearly they cannot, – that would be an unjust, unreasonable and discriminatory term and condition of collocation in violation of § 252(c)(6).

Transmission

There is overwhelming agreement that transmission functionalities, including all types of multiplexing equipment, are necessary.

The only alternative would be to deploy prohibitively expensive interoffice transport facilities, and in many cases extending the loop would, as a technical matter, preclude service.

Packet Switching

There is no clear line between packet switching and multiplexing functionalities – indeed statistical multiplexing functionality that can reduce transmission facility costs by as much as a factor of twenty is integrated into packet switching. Packet switching is thus necessary for interconnection and access to UNEs for the same reason that multiplexing is necessary.

Collocation of packet switching is also "necessary" to fully utilize loops, e.g., in allowing a CLEC to combine voice and data traffic in packets and send all packets over a single loop.

A fully functional ATM switch occupies less than a single equipment rack – the minimum possible floor space consumption of any collocated equipment.

Circuit Switching

Collocation of certain circuit switch functionality, is necessary to serve residential and rural customers through interconnection or access to UNEs, because circuit switching indisputably performs encoding, multiplexing and concentration functions. Like packet switching, circuit switching dramatically increases the efficiency of transmission facilities in those areas.

Collocation of remote switch modules are necessary to serve residential and rural areas.

Collocation of circuit switch functionality is also necessary to access UNEs to serve business customers in many circumstances.